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**IN THE SUPREME COURT/COURT OF APPEALS
FOR THE STATE OF MISSISSIPPI**

EDWARD DARRELL MOORMAN

FILED

APPELLANT

VS.

**JUN 08 2009
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SUPREME COURT
COURT OF APPEALS**

CAUSE NO. 08-CA-01723

REBECCA JANE WALDO MOORMAN

APPELLEE

**ON APPEAL FROM
THE CHANCERY COURT OF PONTOTOC COUNTY, MISSISSIPPI**

ORAL ARGUMENT NOT REQUESTED

BRIEF OF APPELLEE

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APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record hereby certifies that the following listed persons may have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Chancellor: The Honorable Talmadge D. Littlejohn
New Albany, Mississippi

Former Chancellor: The Honorable Jacqueline Estes Mask
Tupelo, Mississippi

Appellant: Edward D. Moorman
Pontotoc, Mississippi

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Guardian *Ad Litem*:

Laura Murphy (deceased)
Booneville, Mississippi

STATEMENT REGARDING ORAL ARGUMENT

Rebecca Jane Waldo Moorman, Appellee, would show that oral argument should be denied in this case pursuant to Rule 34(a)(2), (3) M.R.A.P in that the dispositive issues in this case have been recently authoritatively decided and that the facts and legal arguments are adequately presented in the briefs and records and the decisional process would not be aided by oral argument. The Chancellor explicitly referred to the *Sparkman* opinion in his ruling, as did the Guardian *Ad Litem* in her recommendation which was referred to in the Chancellor's decision and very detailed reasons were given for placing the custody of the children of these parties with the mother, despite the fact that their older half-siblings lived with the father.

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II. The Chancellor properly noted the <i>Sparkman</i> decision in his analysis of the minor children's best interest and gave very specific detailed reasons that would justify awarding custody of these children to their mother, despite the fact that they would be separated from their older half-sibling who lived with their father and awarded such visitation with the father that the bond between these half siblings would not be damaged.	
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TABLE OF AUTHORITIES

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[Legend-R.E.=Record Excerpts; C.P.-Court Papers; T=Transcripts]

SUMMARY OF THE ARGUMENT

The Chancellor's order granting custody of the minor children to their mother should be affirmed, the Chancellor having adequately addressed the concerns of the *Sparkman* decision in awarding custody to their mother. The Chancellor pointed out that those concerns will be addressed further in his opinion and abundant unusual and compelling circumstances were pointed out by the Chancellor in his very detailed analysis of the *Albright* factors, as well as the analysis of the *Guardian Ad Litem*, which was referred to by the Chancellor in his decision, which warranted the separation of the half-siblings. The usual and standard visitation schedule ordered by the Chancellor will insure that the children of the parties will have adequate time with their older half-brothers.

ARGUMENT

I. Standard of Review

The Appellant correctly states the standard of review.

II The Chancellor committed no error by awarding custody of the minor children to their mother.

The report of the Guardian *Ad Litem*, Honorable Laura Eaves Murphy (deceased), contained a very candid analysis of the *Albright* factors, taking into account the holding of the *Sparkman* Court. [R.E. at 45-53; T. at 489-497]. The Guardian *Ad Litem* found Mr. Moorman having a deficit with his parenting skills, even to such an extent that one of his older sons, whose custody was not at issue in this case, was injured in a gun incident involving the father. [R.E. at 46 ; T. at 490]. Furthermore, Ms. Murphy correctly pointed out that at the time of the trial Mr. Moorman was living with a woman to whom he was not married. [R.E. at 49 ; T. at 493]. There was of course nothing the Court could do about this as it related to the three older half-brothers, but the Guardian *Ad Litem*, who did not represent the half-brothers, correctly pointed out this glaring moral defect in the father's character as it would relate to her recommendation for her client, the children of the parties in this case. The Guardian *Ad Litem* also correctly point out that the father had moved six times in the last five years.[R.E. at 50 ; T. at 494]. The Guardian *Ad Litem* correctly referred to the concern about separating siblings, but never-the-less gave details of sufficient and unusual and compelling circumstances that justify her recommendation that the mother have custody despite her concerns about separating the siblings. [R.E. at 50-51; T. at 494-495].

The Chancellor stated his findings of fact and conclusions of law from the bench. [R.E.

at 1-43, ; T. at 498-543] as indicated therein, the Chancellor gave due consideration to the reports and recommendation of the Guardian *Ad Litem* referenced herein above, as well as to the holding of the *Sparkman* court. [R.E. at 2-3; T. at 499-500]. The Chancellor's final order also correctly referred to the final findings of fact and conclusions of law as well as the report of the Guardian Ad Litem. [R.E. at 54-57; C.P. at 000175-000181] In his findings of fact and conclusions of law the Chancellor explicitly referred to the testimony of many witnesses and gave very detailed reasons for his following the recommendation of the Guardian *Ad Litem*, even going way beyond her reasons for placing custody of the minor children with the mother. The Chancellor indicated that he would take into consideration that half-siblings are being separated and went on to give a very detailed explanation and factual basis for his separation of these half-siblings and pointed out sufficient reasons that would justify the existence of unusual and compelling circumstances that would dictate separating the children at issue in this case from their half-siblings and placing them in the custody of their mother. The Chancellor correctly pointed out that nothing can be done with the three half-brothers because their custody was not an issue before the Court as between these parties.[R.E. at 2; T. at 499] The most glaring factor which would justify the Chancellor's placement of the minor children of the parties with their mother concern the difference in the moral fitness of the parents. As the Court pointed out, "[T]here is not even an issue here with this Court." [R.E. at 30; T. at 530]. As the Chancellor stated, "Here's a man living in open adultery with a woman to whom he's not married." [R.E. at 31; T. at 531] It was also significant to the Chancellor that while the parties were separated the husband bought a \$130,000.00 home with another woman with whom he is living and not married with his three

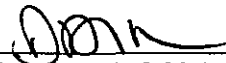
older boys while at the same time becoming \$9, 000.00 in arrears on child support under the temporary order.[R.E. at 31; T. at 531]


For these, as well as all the reasons incorporated into the report of the Guardian *Ad Litem* and the findings of fact and conclusions of law of the Chancellor, sufficient and unusual and compelling circumstances exist to separate the two young children at issue in this case from their older half-brothers. As such, the findings and order of the Chancellor should remain undisturbed by this Honorable Court.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Rebecca Jane Waldo Moorman, the Appellee, by and through counsel, respectfully requests that this Honorable Court confirm the holding of Chancellor Talmadge D. Littlejohn, with all costs assessed to the Appellant.

RESPECTFULLY SUBMITTED, this the 8th day of June, 2009.



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CERTIFICATE OF SERVICE

I, James D. Moore, attorney for Rebecca Jane Waldo Mooreman, do hereby certify that I have on this date filed a bound original and three (3) bound copies of this Brief of Appellee with the Clerk of the Supreme Court. I further certify that I have filed with the Clerk an electronic copy of the Brief of Appellee on CD-ROM.

I further certify that I have filed with the Clerk four (4) copies of the Appellee's Record Excerpts, containing the Court's findings of fact and conclusions of law, the Guardian Ad Litem's Report, and the Order being appealed.

I further certify that I have on this date sent a copy of the Brief of Appellee and the Record Excerpt to the following persons via first-class mail, postage pre-paid:

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RESPECTFULLY SUBMITTED, this the 8th day of June, 2009.



JAMES D. MOORE


ATTORNEY FOR APPELLEE

